IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

TONY SMITH, **Plaintiff,** **v.** **E BACKGROUNDCHECKS.COM, INC.** **Defendant.**	))))))))))))	**Civil Action No. 1:13-cv-02658-JEC-RGV**

PLAINTIFF TONY SMITH'S RESPONSE TO DEFENDANT E-BACKGROUNDCHECK.COM, INC.'S MOTION *IN LIMINE*

Plaintiff, by and through the undersigned counsel, hereby responds in opposition to Defendant E-Backgroundcheck.com, Inc.'s ("BGC") Motion *In Limine* (the "Motion") as follows:

I. OTHER LAWSUITS AGAINST BGC SHOULD BE ADMISSABLE AS EVIDENCE IN THIS MATTER.

"Evidence of similar occurrences may be offered to show a defendant's notice of a particular defect or danger … [or] the defendant's ability to correct a known defect." *Hessen for Use & Benefit of Allstate Ins. Co. v. Jaguar Cars, Inc.*, 915 F.2d 641, 650 (11th Cir. 1990); F. Rule Evid. 404(b)(2). BGC here identified five lawsuits within the previous five years in its responses to Plaintiff's interrogatories "involving a claim for violation of the FCRA involving criminal record information that did not belong to the consumer who waged the dispute." Accordingly, these prior lawsuits are both substantially similar to the subjects in question in this lawsuit and are not remote in time from the claims alleged here by Plaintiff. *See Heath v. Suzuki Motor Corp*., 126 F. 3d 1391, 1396 n.12, 13 (11th Cir.) (stating that evidence meeting "substantial similarity" doctrine is admissible as evidence). Additionally, Plaintiff's use of said information would be to show notice or knowledge of defects in BGC's procedures for preparing criminal background reports which is probative to proving both the negligent and reckless nature of BGC's conduct and specifically permitted under Rule 404(b)(2).

BGC motion does not dispute that the other lawsuits at issue are both substantial similar to the facts here and close in time to violations alleged by Plaintiff. BGC argues only that it supposedly will be subjected to unfair prejudice. BGC, however, does not specifically describe what prejudice it would incur beyond vague statements that jury might somehow be confused or misled. The fact that BGC itself cannot specifically articulate how said evidence could mislead a jury without resorting to non-specific generalizations underscores that BGC's argument on the subject should not prevail. For these reasons, BGC's motion *in limine* on this subject should be denied.

II. Insurance Coverage

Plaintiff does not intend to admit evidence relating to BGC's insurance coverage.

III. Evidence of BGC's Net Worth

In consideration of the Court's ruling that the jury's decision on the amount of punitive damages should be bifurcated, Plaintiff does not intend to admit evidence of BGC's net worth until the second phase of the trial.

Respectfully Submitted,

FRANCIS & MAILMAN, P.C.

/s/ Gregory Gorski
GREGORY GORSKI
(admitted *pro hac vice*)
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DATE: May 27, 2015

CERTIFICATE OF SERVICE

I, GREGORY GORSKI, hereby certify that I have served the following:

PLAINTIFF TONY SMITH'S RESPONSE TO DEFENDANT E-BACKGROUNDCHECK.COM, INC'S MOTION *IN LIMINE*

via ECF Notification upon the following counsel of record:

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/s/ Gregory Gorski
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(Admitted *Pro Hac Vice)*

Attorneys for Plaintiff

Dated: May 27, 2015